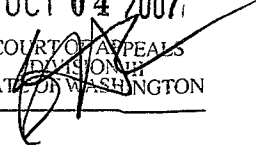


FILED

OCT 04 2007

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By 

82175-5

No. 259358-III

**COURT OF APPEALS,
DIVISION III
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

vs.

VALENTIN SANDOVAL,

Appellant,

**ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRANT COUNTY**

REPLY BRIEF OF APPELLANT

**BRENT A. DE YOUNG
Attorney for Appellant
WSBA # 27935**

**BRENT A. DE YOUNG
ATTORNEY AT LAW
1217 E. Wheeler Rd.
Moses Lake, WA 98837
(509) 764-4333**

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I. ADDITIONAL STATEMENT OF FACTS

The Petitioner concedes that page 4 of the Appellant's brief should have stated, "rape in the third degree – lack of consent" rather than "rape in the third degree – forcible compulsion". However, the legal analysis included in the opening brief was *not* for the forcible compulsion prong of Assault in the Second Degree but rather was for RCW 9A.44.060(1) Rape in the Third Degree – lack of consent. The Petitioner thanks the Respondent for noticing this misstatement so that it may now be corrected.

The Petitioner notes that the appeal and the PRP were consolidated by this Court on May 29, 2007.

II. RESPONSE

1. The Defendant Has Not Been Deported Only Due To The Filing Of An Appeal In This Matter.

The crime of "Rape" is classified by federal immigration law an aggravated felony. 8 U.S.C. § 1101(a)(43)(A) (which defines an "aggravated felony" as "murder, rape, or sexual abuse of a minor.")

Under § 237(a)(2)(A)(iii) of the INA, "[a]ny alien who is convicted of an aggravated felony at any time after admission is deportable."

8 U.S.C. § 1227(a)(2)(A)(iii). As used in that section, an "aggravated felony" includes "rape." 8 U.S.C. § 1101(a)(43)(A). Although the term

"rape" itself is not further defined by the INA, the term encompasses convictions obtained under either federal or state law. *Id.* § 1101(a)(43)

The issue of whether the Petitioner's guilty plea is properly interpreted as an aggravated felony has been previously visited by the Ninth Circuit Court of Appeals. See *United States v. Baron-Medina*, 187 F.3d 1144 (9th Cir. 1999); See also *Rivas-Gomez v. Gonzalez*, 441 F.3d 1072, 1074 (9th Cir. 2006) (finding Defendant's conduct rendered him deportable as an aggravated felon if the crime involved sexual activity with another person that was both unlawful and without consent.)

In the Petitioner's immigration matter, if the matter would have proceeded to a hearing on the merits, the immigration judge would only have considered the "record of conviction" which would consist of the charging document, the plea of guilty, the judgment and sentence and any documents referred to specifically in those documents. The record of conviction does not include the probation or pre-sentence report, police reports, defendant's or others' statements outside of the judgment and sentence hearings, a court docket summary, or other evidence extrinsic to the official hearing. See *U.S. v. Rivera-Sanchez*, 247 F.3d 905, 908 (2001); *Chang v. INS*, 307 F.3d 1185 (9th Cir, 2002); *Matter of Teixeira*, 21 I. & N. Dec. 316 (BIA 1996); *Matter of Short*, 20 I. & N. Dec. 136 (BIA 1989). However, in the Petitioner's case the immigration court will be allowed to

consider the probable cause statement since the Petitioner stated in his guilty plea that this document is incorporated into his guilty plea. (CP 22)

The Ninth Circuit recently held in *Parrilla v. Gonzales*, 414 F.3d 1038 (9th Cir. 2005) that although police reports and probable cause statements standing alone usually may not be considered by the immigration court, the contents of such documents may be considered if specifically incorporated into the guilty plea or admitted by the defendant. The immigration court then has the authority to consider this document to decide whether the Petitioner's conduct made him deportable and also whether or not such conduct rose to the level of an aggravated felony. The probable cause statement is essentially all of the information included in the police reports in a criminal matter. The probable cause statement would include conduct to which the Defendant did not plead guilty. In this instance, the inclusion of the probable cause statement is not pivotal as to whether the Petitioner is deportable as an aggravated felon.

In analyzing criminal cases, the immigration and federal courts engage in what is known as a "categorical and modified categorical analysis". This test is set forth in *Taylor v. United States*, 495 U.S. 575 (1990). Under the categorical analysis the court looks to the language of the statute—not the underlying facts of the case—to determine the

elements of the particular offense and whether the offense is deportable and if it is deportable, whether it is also an aggravated felony.

The defendant in this case pleaded guilty to Rape in the Third Degree (Lack of Consent) RCW 9A.44.060(1)(a), which provides:

(1) A person is guilty of rape in the third degree when, under circumstances not constituting rape in the first or second degrees, such person engages in sexual intercourse with another person, not married to the perpetrator:

(a) Where the victim did not consent as defined in RCW 9A.44.010(7), to sexual intercourse with the perpetrator and such lack of consent was clearly expressed by the victim's words or conduct

The Petitioner's immigration lawyer did not argue that the conduct to which the Petitioner pleaded guilty did not constitute a deportable offense or that the offense was not an aggravated felony. The immigration lawyer argued only that the guilty plea was not final and therefore could not be used to deport him. From a review of the immigration court record in this matter (attached as Exhibit #1), it is clear that his immigration lawyer had no other available grounds to argue on the Petitioner's behalf.

2. The Defendant Was Not Able To Possibly Ameliorate The Consequences Of His Guilty Plea. If His Guilty Plea Stands, He Will Again Be Taken Into Custody Once A Mandate Issues And Then Be Deported.

The Respondent has stated that his trial counsel's belief that the immigration consequences could be "ameliorated" was somehow satisfied when the Petitioner later sought immigration advice, even though at the time he was in immigration proceedings. The 1992 New Webster's Dictionary defines "ameliorate" as follows:

"to improve, make better."

Considering a plea of guilty to the offense of Rape in the Third Degree – Lack of Consent, there is simply no possibility that any immigration lawyer could do anything to improve or make better the dire immigration consequences of such a guilty plea. Whether the Petitioner had been put into deportation proceedings immediately or at any time after his guilty plea, the immigration consequences would be identical.

The only thing that the Petitioner's immigration attorney was able to do to improve or make better the Petitioner's situation was to file an appeal and a PRP on his behalf based on the incorrect immigration advice that he received from his trial attorney. It is clear from the trial attorney's

affidavit that this could not have been the ameliorative action that the trial attorney had originally envisioned. (Para. 7)

Therefore, his immigration lawyer's only available argument was that the conviction was not yet final. Even in spite of this argument, the Department of Homeland Security continued to hold the Defendant, unsure whether the Petitioner's appeal was permissive or as a matter of right. (See Exhibit #2)

3. The Petitioner's Guilty Plea Was Neither Knowing, Voluntary Nor Based On A Full Understanding Of The Consequences Of His Guilty Plea

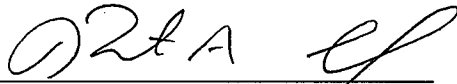
The correct standard of proof to vacate a defective guilty plea is not accomplished by weighing the sentence that the Defendant ultimately received in comparison with the jail time that might have been imposed if the Defendant had been found guilty as charged. (See Respondent's Brief, pages 16-17) Instead, the question is a more fundamental one. Did the Defendant enter his guilty plea knowingly, voluntarily and with a full understanding of the consequences of his guilty plea? The evidence provided shows that he did not.

The Petitioner has previously provided authority for this standard. (Appellant's Brief at 5, 10)

CONCLUSION

Based on the authority provide herein, the Petitioner respectfully requests that this Court vacate his guilty plea and remand this case to the Grant County Superior Court for further proceedings.

Respectfully submitted this 6th day of October, 2007

A handwritten signature in cursive script, appearing to read "Brent A. De Young", written over a horizontal line.

Brent A. De Young, WSBA #27935
Attorney at Law

Record of Deportable/Inadmissible Alien

Family Name (CAPS) SANDOVAL-Sandoval, Valentin			First	Middle	Sex M	Hair BLK	Eyes BRO	Complexion MED	
Country of Citizenship MEXICO		Passport Number and Country of Issue		Case No: A090 111	File Number SPO0701000017 513	Height 68	Weight 170	Occupation UNEMPLOYED	
U.S. Address C/O TACOMA NORTH WEST DETENTION CENTER 1623 EAST 'J' STREET TACOMA, WASHINGTON 98421					Scars and Marks See Narrative				
Date, Place, Time, and Manner of Last Entry 1//1985, 1800, SLU, AFOOT, PWI				Passenger Boarded at		F.B.I. Number 699731LA2 <input checked="" type="checkbox"/> Single <input type="checkbox"/> Divorced <input type="checkbox"/> Married <input type="checkbox"/> Widower <input type="checkbox"/> Separated			
Number, Street, City, Province (State) and Country of Permanent Residence UNK SAN ANGEL, MICHOACAN MEXICO					Method of Location/Apprehension CLC 520.3.1				
Date of Birth 09/12/1963		Age: 43		Date of Action 01/25/2007	Location Code SEA/SPO	At/Near Ephrata, WA		Date/Hour 01/24/2007 1800	
City, Province (State) and Country of Birth SAN ANGEL, MICHOACAN, MEXICO		AR <input checked="" type="checkbox"/>	Form: (Type and No.)		Lifted <input type="checkbox"/>	Not Lifted <input type="checkbox"/>			
NIV Issuing Post and NIV Number		Social Security Account Name SANDOVAL, VALENTIN			Status at Entry PWA Mexico				Status When Found IN INSTITUTION
Date Visa Issued		Social Security Number 600-40-2832			Length of Time Illegally in U.S. OVER 1 YEAR				
Immigration Record POSITIVE - See Narrative				Criminal Record See narrative					
Name, Address, and Nationality of Spouse (Maiden Name, if Appropriate)						Number and Nationality of Minor Children 1 USC			
Father's Name, Nationality, and Address, if Known SANDOVAL, Valentin UNK, MEXICO				Mother's Present and Maiden Names, Nationality, and Address, if Known SANDOVAL, Josefina UNK, MEXICO					
Monies Due/Property in U.S. Not in Immediate Possession		Fingerprinted? Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>		INS Systems Checks See Narrative		Charge Code Word(s) R2A3			
Name and Address of (Last)/(Current) U.S. Employer		Type of Employment		Salary		Employed from/to Hr. / / / /			

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)

OTHER ALIASES KNOWN BY
SANDOVAL, VALENTINE

SCARS, MARKS AND TATTOOS
None Indicated

APPREHENDED BY
LARRY J. DYE
KEVIN WILKS

MOTHER'S NATIONALITY
MEXICO

INS SYSTEMS CHECKS
Central Index System Positive
Computer Linked Application Information Management System Negative
Deportable Alien Control System Negative
Interagency Border Inspection System Negative
National Crime Information Center Positive
National Law Enforcement Telecommunications System Positive
Treasury Enforcement Communications System Positive

Alien has been advised of communication privileges. 01/24/07 JKW (Date/Initials)

KEVIN WILKS
IMMIGRATION ENFORCEMENT AGENT
(Signature and Title of INS Official)

Distribution:
--FILE
--SPO
1-STATS

Received: (Subject and Documents) (Report of Interview)
Officer: **KEVIN WILKS**

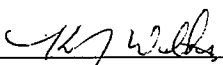
January 25, 2007
1400 (time)

Disposition: **Warrant of Arrest/Notice to Appear**

Examining Officer: **SUSAN A. PHILEN**

EXHIBIT

tabbies

Alien's Name SANDOVAL-Sandoval, Valentin	File Number Case No: SPO0701000017 A090 111 513	Date 01/25/2007
<p>Narrative Title: Record of Deportable/Excludable Alien Narrative Created by WILKS</p> <p>SANDOVAL-Sandoval, Valentin is a native and citizen of Mexico who last entered the United States after crossing the international border into Yuma, Arizona from Baja California, Mexico on or about a unknown day in January 1985.</p> <p>On 08/13/2006, SANDOVAL was arrested and booked into Grant County Jail for RAPE IN THE SECOND-FORCE COMPULSION, RCW 9A.44.050 (1)(a) CLASS A FELONY.</p> <p>SANDOVAL was interviewed by this agent to determine if he had legal status. The subject stated that he had legal status, and a LAPR card. This agent ran a record check in the CIS system to verify the subject's status, it returned positive. No I-247 was placed at that time, and it was requested that the subject's file be flagged.</p> <p>On 01/22/2007, this agent was contacted by Grant County Jail, and advised that SANDOVAL had completed his sentence. A detainer was placed.</p> <p>ON 08/13/2006, Officer Tony Valdivia of the Mattawa Police Department was dispatched to a family fight. Upon arrival Office Valdivia contacted Anna Sanchez who provided a written and verbal statement as to the following:</p> <p>Sanchez stated that he boyfriend and SANDOVAL had been drinking outside of her home, and she had not been drinking and fell asleep on the couch. Some time after midnight Sanchez felt someone touch her and pull her pants down to her thighs. SANDOVAL continued to touch her in a sexual way and then lay on top of her, she could smell a strong odor of beer on SANDOVAL.</p> <p>Because she was half asleep, she thought it was her boyfriend, and told him to leave her alone because he was drunk and she was tired. SANDOVAL did not say anything, only continued to touch her in a sexual manner. Sanchez told him to stop because he was hurting her. Now being fully awake Sanchez realized the subjects breathing was different than her boyfriends.</p> <p>Sanchez pushed SANDOVAL onto the floor and he went after her aging with his hands. Sanchez was then able to get a good look and realized that it was not her boyfriend because of his body shape, hair and shoes. Sanchez pushed SANDOVAL onto the floor, managed to get off the couch, pull up her pants, and turn on the light.</p> <p>This is when Sanchez saw the face of SANDOVAL, who was sitting on the floor with his pants and under shorts around his ankles. Sanchez kicked SANDOVAL twice in his lower back and called him, "Stupid!" SANDOVAL then got up and pulled up his pants and stated "Please forgive me Misses Anna, I was drunk and did not know what I was doing."</p> <p>Sanchez then told SANDOVAL to get the hell out of there because she was going to call the</p>		
Signature KEVIN WILKS 	Title IMMIGRATION ENFORCEMENT AGENT	

2 of 3 Pages

Alien's Name SANDOVAL-Sandoval, Valentin	File Number Case No: SPO0701000017 A090 111 513	Date 01/25/2007
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police. SANDOVAL then walked out of the door. Sanchez then sat and cried unsure of what to do. After thinking about it for awhile, Sanchez came to the conclusion that she needed to report it, in fear that he may come back and try and hurt her or her daughter, attempt to do it aging, or do it to some one else.

Sanchez drove with Officer Valdivia, and showed the officer where SANDOVAL lived. Officer Valdivia then took Sanchez home, and returned to SANDOVAL's home. AS Officer Valdivia approached, he saw a man standing behind the fence, he asked his name and identified himself as Valentin SANDOVAL. Officer Valdivia then asked for identification, which was provided.

SANDOVAL was then placed under arrest. Officer Valdivia stated that he could smell the odor of liquor coming from SANDOVAL's mouth and he was speaking. SANDOVAL was then transported to Grant County Jail, and informed that he was under arrest for Rape in the Second Degree.

On 10/3/2006, SANDOVAL was found guilty by plea for RAPE IN THE THIRD DEGREE, RCW 9A.44.060 (1)(a) CLASS C FELONY, Jail 6 months, 12 month Community Custody, with a fine of \$1400.00 with \$650.00 suspended for a amount of \$750.00

SANDOVAL has been arrest prior to this encounter.

At the time of writing this narrative this agent was unable to get a certified copy of two Judgment and Sentence (J&S) for two charges in that occurred in Phoenix Arizona of which one is listed in the criminal history. The Grant County District Attorneys Office so tried to retrieve copies of the J&S's with no response.

The Grant County District Attorneys Office provided a copy of the Presentence Investigation for the Stalking case listed below.

CRIMINAL HISTORY:

On 06/02/2000, charged in Phoenix, AZ with FELONY STALKING, Jail 2 months, probation 3 years.

SANDOVAL was advised of his communication right on 01/24/2007

SANDOVAL is in good health.

Signature KEVIN WILKS <i>[Signature]</i>	Title IMMIGRATION ENFORCEMENT AGENT
---	--

mailed 3-20-7

BDT

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SEATTLE, WASHINGTON

File No. A 90111513

August 6, 2003

In the Matter of:
Valentin Sandoval
Respondent

In Removal Proceedings

Before Immigration Judge
Victoria E. Young

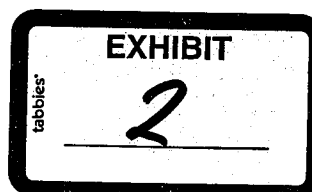
Respondent's Denial of
Removability

II. INTRODUCTION

Respondent, Valentin Sandoval denies deportability based on the grounds that the disposition of his criminal case is not final, and is on direct appeal with the Washington State Division III Court of Appeals.

II. FACTS OF RESPONDENT'S CURRENT CHARGES

The respondents pleaded guilty, on January 23, 2007 to Rape in the Third Degree (Lack of Consent). This matter was set for Sentencing before the Grant County Superior Court in Ephrata, Washington on January 23, 2007. Mr. Sandoval was sentenced to 6 to 12 months of jail confinement. Immediately thereafter, a border patrol hold was placed on Mr.



Sandoval at the Grant County Jail. Mr. Sandoval's guilty plea was based on improper advice pertaining to immigration. Therefore, consequences of his plea of guilt. A direct appeal was timely filed with the Washington State Court of Appeals on February 16, 2007.

III. ARGUMENT

The Disposition of The Criminal Case Is Not Final

Mr. Sandoval has been lawfully admitted to the United States, the burden of proof is on the INS to establish deportability by "clear and convincing evidence." See INA 240(c)(3)(A); see also *Woodby v. INS*, 385 U.S. 276 (1966). Most of the criminal grounds of deportability require a "conviction." In addition, while most of the criminal grounds of inadmissibility do not require a conviction, the INS, now DHS in practice also relies on a criminal court "conviction" when charging inadmissibility. As a result of IIRIRA, the Immigration and Nationality Act now provides that a criminal disposition may be considered a conviction for immigration purposes in the following two circumstances: (1) a formal judgment of a guilt of the alien has been entered by a court, or (2) adjudication of guilt has been withheld, but a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to a warrant a finding of guilt, and the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. See INA § 101(a)(48)(A), added by IIRIRA § 322. The Board of Immigration Appeals has broadly interpreted this new definition to find that no effect is to be given in immigration proceedings to a state action that purports to expunge, dismiss, cancel vacate, discharge, or otherwise remove a guilty plea or other or other record of guilt or conviction by

operation of a state rehabilitative statute. If a conviction relied upon by the INS is on direct appeal and if the person is in INS custody, he or she should be released because the conviction is not yet final.

Although there are indications that some members of the BIA believe the IIRIRA definition of "conviction" means that finality is no longer required at least with respect to a criminal deferred adjudication procedure, see Matter of Punu, Int. Dec. 3364 (BIA 1998) (concurring opinion of Board member Edward R. Grant); Matter of Roldan-Santoyo Int. Dec. 337 (BIA 1999) (majority opinion does not reach issue), a requirement of finality is still the precedent rule of law. See Pino v. Landon, 349 U.S. 901 (1955); Marino v. INS, 537 F. 2d 686 (2d Cir. 1976); Matter of Ozkok, 19 I&N Dec. 546 at n.7 (BIA 1988) ("It is well established that a conviction does not attain a sufficient degree of finality for immigration purposes until direct appellate review of the conviction has been exhausted or waived.").

Since the Supreme Court decided Pino v. Landon, 349 U.S. 901 (1955), it has been the general rule that a conviction must attain some degree of finality in order for it to be used as a basis for deportation/removal. Thus, a conviction on direct appeal cannot be considered sufficiently final for purposes of deportation/removal of the noncitizen defendant.

Mr. Sandoval does not argue he has not been convicted; he argues only that any conviction has not become final. Finality is a significant factor in immigration cases. As the court in White stated, "Superimposed on the BIA's three-part test is an additional requirement: the conviction must have attained a sufficient degree of finality." Id. at 479 (citing Pino v. Landon, 349 U.S. 901, 901, 75 S. Ct. 576, 576, 99 L. Ed. 1239, 1239 (1955)). Under White's analysis, a conviction becomes final if direct appellate review of the

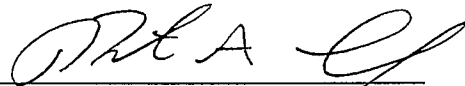
conviction has either been exhausted or waived. See White 17 F.3d at 479.

V. CONCLUSION

In the present case, Mr. Sandoval's case in the trial court has not been finalized. Mr. Sandoval has filed a direct appeal with the Court of Appeals and denies deportability. Mr. Sandoval must be released because the conviction is not yet final. Therefore, the Court should terminate the District Counsel's removal proceedings brought against the Respondent. See Exhibit A.

DATED this 20th day of March, 2007.

Respectfully Submitted,



Brent A. De Young
Attorney for Respondent
1233 E. Wheeler Rd
Moses Lake, WA 98837
WSBA# 27935

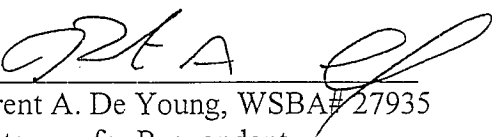
CERTIFICATE OF SERVICE

This will hereby certify that on the 20th day of March, 2007, I mailed a true and correct copy of Respondent's Denial of Deportability to the following interested parties:

Immigration Court
Executive Office for Immigration Review
1000 Second Avenue, Suite 2500
Seattle, WA 98104-1095

Chief Counsel
ICE District Counsel
1000 Second Avenue, Suite 2900
Seattle, WA 98104-1088

DATED this 20th day of March, 2007.



Brent A. De Young, WSBA# 27935
Attorney for Respondent

Edward L. Dunlay
Deputy Chief Counsel
Immigration and Customs Enforcement
Northwest Detention Center
1623 E J Street, Suite 2
Tacoma, Washington 98421
(253)779-6015

DETAINED
RECEIVED

MAR 30 2007

DE YOUNG LAW OFFICE

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1000 Second Ave., Suite 2500
Seattle, WA 98104

IN THE MATTER OF:)

Valentin SANDOVAL-Sandoval)

A90 111 513)

Seattle, Washington)

IN REMOVAL PROCEEDINGS

MOTION TO RECALENDAR

Immigration and Customs Enforcement (ICE) moves to recalendar removal proceedings in this matter. The court had administratively closed proceedings on March 23, 2007.

Upon supervisory review, ICE now believes it should not have agreed to administrative closure on the basis of the Respondent's asserted appeal of his conviction for Rape in the Third Degree. While ICE does not question the genuineness of the NOTICE OF DIRECT APPEAL TO DIVISION III COURT OF APPEALS, this is not sufficient to establish a direct appeal of right, which would

render the Respondent's conviction other than final for immigration purposes.

The government previously submitted a Judgment stating, in part, "The defendant was found guilty on OCTOBER 3, 2006 by PLEA." In the state of Washington, "A voluntary guilty plea acts as a waiver of the right to appeal." *State v. Smith*, 953 P.2d 810, 811 (Wash. 1998).

While it may be that the Washington court of appeals will consider the Respondent's appeal as a matter of discretion, such discretionary consideration would not render the conviction non-final for immigration purposes.

Once an alien has been convicted by a court of competent jurisdiction and exhausted the direct appeals to which he is entitled, his conviction is final for the purpose of the immigration laws. It would frustrate the immigration laws to permit an alien with a conviction affirmed on appeal to escape deportation while awaiting a discretionary review, We are of the opinion that the discretionary review on direct appeal is analagous to collateral attack for purposes of determining finality in deportation.

Because Morales-Alvarado has exhausted his appeals of right from his conviction, his conviction is final as far as this proceeding is concerned.

Morales-Alvarado v. INS, 655 F.2d 172, 175 (9th Cir. 1981).

In light of *Morales-Alvarado* and the precedent of other circuits, the Board has stated "an alien who has either waived or exhausted his right to a direct appeal of his conviction is subject to deportation, and that potential for discretionary review on direct appeal will not prevent the

conviction from being considered final for immigration purposes." *Matter of Polanco*, 20 I&N Dec. 894, 896 (BIA 1994).

Therefore, ICE requests the court to recalendar the matter so that a determination on the merits of the case may be reached in an expeditious manner.

Respectfully submitted,

Dorothy Stefan
Chief Counsel

Edward L. Dunlay

Edward L. Dunlay
Deputy Chief Counsel

Date: March 23, 2007

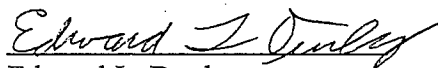
CERTIFICATE OF SERVICE

Alien's Name: *Valentin Sandoval-Sandoval*

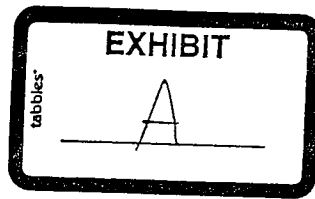
Alien Number: *A90 111 513*

On March 26, 2007, I, Edward L. Dunlay sent via 1st class mail a complete copy of this Motion and any attached pages to the respondent's representative at the following address:

Brent A. De Young, Esquire
1217 E. Wheeler
Moses Lake, WA 98837


Edward L. Dunlay
Deputy Chief Counsel

Date: 3-23-07



FILED

FEB 16 2007

KIMBERLY A. ALLEN
Grant County Clerk

IN THE GRANT COUNTY SUPERIOR COURT
STATE OF WASHINGTON

STATE OF WASHINGTON,

Plaintiff,

vs.

VALENTIN SANDOVAL,

Defendant.

No. 06-1-00500-0

NOTICE OF DIRECT APPEAL TO
DIVISION III COURT OF
APPEALS



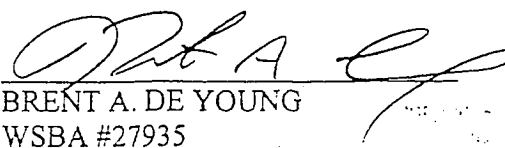
TO: GRANT COUNTY SUPERIOR COURT CLERK
TO: PROSECUTING ATTORNEY OF GRANT COUNTY

PLEASE TAKE NOTICE that the Defendant, Valentin Sandoval, by and through his attorney, Brent A. De Young, gives notice of direct appeal and seeks review by Division III Court of Appeals of the acceptance of the defendant's guilty plea and the finding of guilt in this matter by the Grant County Superior Court on January 23, 2007.

A copy of the decision is attached to this notice.

DATED this 16th day of February, 2007.

ATTORNEY FOR DEFENDANT


BRENT A. DE YOUNG
WSBA #27935

CERTIFICATE OF SERVICE

I certify that on this day I caused a true and correct copy of the document to which this declaration is attached to be served on the following in the manner indicated below:

Prosecuting Attorney () U.S. Mail
P.O. Box 37 (X) Hand Delivery
Ephrata, WA 98837 ()

Dated: This 16th day of February, 2007.

NOTICE OF APPEAL

Page 1 of 1

Brent A. De Young
Attorney at Law
1217 E. Wheeler Road
Moses Lake, WA 98837
TEL: (509) 764-4333 FAX: (509) 764-4432

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1000 SECOND AVE., SUITE 2500
SEATTLE, WA 98104

In the Matter of: SANDOVAL-SANDOVAL, VALENTIN

Case No.: A90-111-513

IN REMOVAL PROCEEDINGS

ATTORNEY AT LAW
DE YOUNG ESQ., BRENT A.
1217 E. WHEELER
MOSES LAKE, WA 98837

THOMAS P. MOLLOY, ICE ASST. CHIEF COUNSEL, DHS

ORDER OF THE IMMIGRATION JUDGE

It is HEREBY ORDERED that the case be administratively closed and be considered no longer pending before the Immigration Judge for the following reason:

- (✓) Upon joint request by both parties.
- () Neither the respondent nor any representative on the respondent's behalf appeared for the hearing and the Service expressed no opposition.

(✓) Other: CONVICTION NOT FINAL AS
PENDING DIRECT APPEAL

If either party in this case desires further action on this matter, at any time hereafter, a written motion to recalendar the case (including a certificate of service on the opposing party) must be filed with the Office of the Immigration Court having administrative control over the Record of Proceeding in this case.

Paul R. Fogel
VISITING JUDGE 2
Immigration Judge
Date: Mar 23, 2007

Appeal: NO APPEAL (A/I/B)
Appeal Due By:

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: [] ALIEN [] ALIEN c/o Custodial Officer [] Alien's ATT/REP [] DHS

DATE: 3/23/07 BY: COURT STAFF

Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

RECEIVED

APR 02 2007

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
1000 SECOND AVE., SUITE 2500
SEATTLE, WA 98104

DE YOUNG LAW OFFICE

RE: SANDOVAL-SANDOVAL, VALENTIN
FILE: A90-111-513

DATE: Mar 28, 2007

TO: DE YOUNG, BRENT A.
ATTORNEY AT LAW
1217 E. WHEELER
MOSES LAKE, WA 98837

Please take notice that the above captioned case has been scheduled for a MASTER hearing before the Immigration Court on Apr 5, 2007 at 1:00 P.M. at:

1623 E. J STREET
TACOMA, WA 98421

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions: (1) You may be taken into custody by the Department of Homeland Security and held for further action. OR (2) Your hearing may be held in your absence under section 240(b) (5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT SEATTLE, WA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A list of free legal service providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 or 703-305-1662.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: [] ALIEN [X] ALIEN c/o Custodial Officer [X] ALIEN's ATT/REP [X] DHS
DATE: 3/28/07 BY: COURT STAFF [X] V3
Attachments: [] EOIR-33 [] EOIR-28 [] Legal Services List [] Other

MAILED
Overnight
4-2-07

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SEATTLE, WASHINGTON

File No. A 90111513

April 2, 2007

In the Matter of:
Valentin Sandoval
Respondent

In Removal Proceedings

Before Visiting Immigration Judge

Respondent's Motion to Immediately
Release Improperly Detained
Individual

I. Motion to Immediately Release Improperly Detained Individual

On March 23, 2007, the Respondent moved to terminate removal proceedings in the instant case. The Government was represented by ICE counsel, who agreed that the matter was not yet "final" for immigration purposes, and moved to terminate proceedings. The Honorable Judge Defonzo inquired further to be certain that the matter on direct appeal was the same matter referred to in the ICE I-213. IJ Defonzo then granted the ICE motion to terminate. Neither side offered or reserved any objections to the termination of this matter.

Mr. Sandoval was not immediately released per the IJ's order, but instead continues to be held without lawful authority.

On March 30, 2007, a "Motion to Recalendar" was received by Mr. Sandoval's attorney.

The Motion opines that Mr. Sandoval's direct appeal is not a direct appeal.¹

ICE now argues that the current federal standard of finality in criminal matters as applied to immigration proceedings should be discarded for a more relaxed standard. ICE argues that the correct definition is to be found in *State v. Smith*, 90 Wn. App. 856, 954 P.2d 362 (1998).

A. May ICE continue to hold an Individual indefinitely after proceedings against him have been terminated?

ICE contends, without citation to authority, that it may continue to hold Mr. Sandoval after terminating the charges on his I-213.

However, this particular action has already been considered by the Ninth Circuit Court of Appeals and has been held to be improper.

In *Bravo-Pedroza v. Gonzalez*, No. 03-73999 (9th Cir. Feb. 6, 2007), ICE sought to refile charges based on a new theory that it had failed to argue during the first immigration court hearing on the matter. ICE argued that its decision to bring new charges was similar to a prosecutor's decision to bring new criminal charges, and that its "exercise of discretion" was not bound by res judicata. The Ninth Circuit Court of appeals did not find this argument compelling and held that ICE was indeed bound by res judicata from relitigating an identical matter.

Bravo-Pedroza v. Gonzalez at 1469.

The court explained:

The regulation is that already cited: 8 C.F.R. § 3.30 (2003). Plainly it states that new charges may be brought during the pendency of immigration proceedings. It says nothing about new charges after

¹ The ICE Motion states in part: "ICE does not question the genuineness of the NOTICE OF DIRECT APPEAL TO DIVISION III COURT OF APPEALS". However, based upon the fact that Mr. Sandoval continues to be detained on this matter, one can only assume that this statement is made either sarcastically or derisively.

one proceeding is over. By regulation, the government has provided a means for adding charges, a procedure which the Secretary seeks to circumvent here by starting a new case. We have not approved of government attempts to "bypass its own regulations" in the immigration context in the past, *Ramon-Sepulveda v. INS*, 863 F.2d 1458, 1461 (9th Cir. 1988) (*Ramon-Sepulveda II*), and will not condone it here.

Bravo-Pedroza v. Gonzalez at 1470.

B. Assuming That The Relaxed "Smith Standard" Applies In This Case, May Mr. Sandoval Continue To Be Held?

ICE contends that "a voluntary guilty plea acts as a waiver of the right to appeal." *State v. Smith*, 134 Wn.2d 849, 953 P.2d 810 (1998). Therefore, under the standard urged by ICE, all "voluntary" guilty pleas should be considered final for immigration purposes irrespective of whether a direct appeal is filed.

While *Smith* stands for a general truism under Washington law, *Smith* does not contend that all guilty pleas are, in fact, "voluntary". *Smith* is not considered by criminal practitioners to be a seminal case regarding the "voluntariness" of guilty pleas.

Smith further states: "A criminal defendant may waive his or her constitutional right to appeal, but the waiver is valid only if made intelligently, voluntarily, and with an understanding of the consequences." *Smith* at 852, Quoting *State v. Perkins*, 108 Wn.2d 212, 218, 737 P.2d 250 (1987).

The voluntariness of Mr. Sandoval's plea of guilty is the subject of his direct appeal.

Even under its relaxed standard, the authority cited by ICE does not support its contention that Mr. Sandoval's direct appeal is not a direct appeal.

C. What is A Direct Appeal? Has Mr. Sandoval Properly Filed A “Direct Appeal” Under Washington Statutes?

A direct appeal is an appeal that is made as a matter of right. *State v. Taylor*, 150 Wn.2d 599, 603, 80 P.3d 605 (2003) (quoting *In re Det. of Petersen*, 138 Wn.2d 70, 88, 980 P.2d 1204 (1999) (quoting *Anderson & Middleton Lumber Co. v. Quinault Indian Nation*, 79 Wn. App. 221, 225, 901 P.2d 1060 (1995), *aff’d*, 130 Wn.2d 862, 929 P.2d 379 (1996)). *See also State v. Siglea*, 196 Wash. 283, 285, 82 P.2d).

The Washington Rules of Appellate Procedure go into greater detail about what matters may be appealed as a matter of right.

RAP 2.2 “Decisions Of The Superior Court That May Be Appealed” provides:

(a) Generally. Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:

(1) Final Judgment. The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.
(Emphasis Added)

(2) (Reserved.)

(3) Decision Determining Action. Any written decision affecting a substantial right in a civil case that in effect determines the action and prevents a final judgment or discontinues the action.

(4) Order of Public Use and Necessity. An order of public use and necessity in a condemnation case.

(5) Juvenile Court Disposition. The disposition decision following a finding of dependency by a juvenile court, or a disposition decision following a finding of guilt in a juvenile offense proceeding.

(6) Termination of All Parental Rights. A decision depriving a person of all parental rights with respect to a child.

(7) Order of Incompetency. A decision declaring an adult legally incompetent, or an order establishing a conservatorship or guardianship for an adult.

(8) Order of Commitment. A decision ordering commitment, entered after a sanity hearing or after a sexual predator hearing.

(9) Order on Motion for New Trial or Amendment of Judgment. An order granting or denying a motion for new trial or amendment of judgment.

(10) Order on Motion for Vacation of Judgment. An order granting or denying a motion to vacate a judgment.

(11) Order on Motion for Arrest of Judgment. An order arresting or denying arrest of a judgment in a criminal case.

(12) Order Denying Motion To Vacate Order of Arrest of a Person. An order denying a motion to vacate an order of arrest of a person in a civil case.

(13) Final Order After Judgment. Any final order made after judgment that affects a substantial right.

(b) Appeal by State or a Local Government in Criminal Case. Except as provided in section (c), the State or a local government may appeal in a criminal case only from the following superior court decisions and only if the appeal will not place the defendant in double jeopardy:

(1) Final Decision, Except Not Guilty. A decision that in effect abates, discontinues, or determines the case other than by a judgment or verdict of not guilty, including but not limited to a decision setting aside, quashing, or dismissing an indictment or information.

(2) Pretrial Order Suppressing Evidence. A pretrial order suppressing evidence, if the trial court expressly finds that the practical effect of the order is to terminate the case.

(3) Arrest or Vacation of Judgment. An order arresting or vacating a judgment.

(4) New Trial. An order granting a new trial.

(5) Disposition in Juvenile Offense Proceeding. A disposition in a juvenile offense proceeding that is below the standard range of disposition for the offense or that the state or local government believes involves a miscalculation of the standard range.

(6) Sentence in Criminal Case. A sentence in a criminal case that is outside the standard range for the offense or that the state or local government believes involves a miscalculation of the standard range.

(c) Superior Court Decision on Review of Decision of Court of Limited Jurisdiction. If the superior court decision has been entered after a proceeding to review a decision of a court of limited jurisdiction, a party may appeal only if the review proceeding was a trial de novo and the final judgment is not a finding that a traffic infraction has been committed.

(d) Multiple Parties or Multiple Claims or Counts. In any case with multiple parties or multiple claims for relief, or in a criminal case with multiple counts, an appeal may be taken from a final judgment that does not dispose of all the claims or counts as to all the parties, but only after an express direction by the trial court for entry of judgment and an express determination in the judgment, supported by written findings, that there is no just reason for delay. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party. The time for filing notice of appeal begins to run from the entry of the required findings. In the absence of the required findings, determination and direction, a judgment that adjudicates less than all the claims or counts, or adjudicates the rights and liabilities of less than all the parties, is subject only to discretionary review until the entry of a final judgment adjudicating all the claims, counts, rights, and liabilities of all the parties.

An appeal of the final sentence in a criminal matter is a direct appeal. RAP 2.2(a).

Certain timeliness provisions also apply and demand that a direct appeal be perfected in a timely manner.

RAP 5.2 "Time Allowed to File Notice" provides:

(a) Notice of Appeal. Except as provided in rules 3.2(e) and 5.2(d) and (f), a notice of appeal must be filed in the trial court within

the longer of (1) 30 days after the entry of the decision of the trial court which the party filing the notice wants reviewed, or (2) the time provided in section (e). (Emphasis Added)

(b) Notice for Discretionary Review. Except as provided in rules 3.2(e) and 5.2(d) and (f), a notice for discretionary review must be filed in the trial court within 30 days after the act of the trial court which the party filing the notice wants reviewed.

(c) Date Time Begins To Run. The date of entry of a trial court decision is determined by CR 5(e) and 58.

(d) Time Requirements Set by Statute Govern. If a statute provides that a notice of appeal, a petition for extraordinary writ, or a notice for discretionary review must be filed within a time period other than 30 days after entry of the decision, the notice required by these rules must be filed within the time period established by the statute.

(e) Effect of Certain Motions Decided After Entry of Appealable Order. A notice of appeal of orders deciding certain timely motions designated in this section must be filed in the trial court within (1) 30 days after the entry of the order, or (2) if a statute provides that a notice of appeal, a petition for extraordinary writ, or a notice for discretionary review must be filed within a time period other than 30 days after entry of the decision to which the motion is directed, the number of days after the entry of the order deciding the motion established by the statute for initiating review. The motions to which this rule applies are a motion for arrest of judgment under CrR 7.4, a motion for new trial under CrR 7.5, a motion for judgment as a matter of law under CR 50(b), a motion to amend findings under CR 52(b), a motion for reconsideration or new trial under CR 59, and a motion for amendment of judgment under CR 59.

(f) Subsequent Notice by Other Parties. If a timely notice of appeal or a timely notice for discretionary review is filed by a party, any other party who wants relief from the decision must file a notice of appeal or notice for discretionary review with the trial court clerk within the later of (1) 14 days after service of the notice filed by the other party, or (2) the time within which notice must be given as provided in sections (a), (b), (d) or (e).

(g) Effect of Premature Notice. A notice of appeal or notice for discretionary review filed after the announcement of a decision but

before entry of the decision will be treated as filed on the day following the entry of the decision.

Mr. Sandoval's appeal was filed on February 16, 2007. Mr. Sandoval's sentencing took place on January 23, 2007. Twenty-three days elapsed between the sentencing and the appeal. The direct appeal is therefore timely and is pursued as matter of right. RAP 2.2, 5.1

II. CONCLUSION

Mr. Sandoval's appeal is an appeal that is made as a matter of right and not a collateral attack.

ICE was notified on February 28, 2007 at Master Calendar hearing that Mr. Sandoval is pursuing a direct appeal of his criminal matter. ICE was also given courtesy copies of Mr. Sandoval's appeal, mailed to ICE counsel on March 1, 2007.

ICE does not contend that it didn't have enough time to verify that Mr. Sandoval's direct appeal has been filed. Presumably, if ICE had asked for an additional continuance to verify the direct appeal, it is a virtual certainty that the IJ would have granted such a continuance.

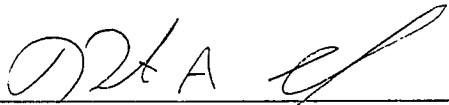
It may be well and good that ICE has an interest in preventing what they may see as a "nickel and dime" method avoiding immigration removal by the seemingly effortless filing of a single document. However, Mr. Sandoval's direct appeal has been paid for by the provision of a very significant amount of money given by both Mr. Sandoval's family members and friends. Mr. Sandoval's direct appeal is very real in every conceivable legal and lay definition of a direct appeal.

A significant constitutional error occurred during the Superior Court's acceptance of Mr. Sandoval's guilty plea, which may only be corrected by the vacation of his guilty plea. However

great the ICE distaste for basic criminal process, it is the Law and it must be upheld at every moment in every immigration matter.

The ICE Motion to Recalendar is wholly without legal basis or merit and should be denied.

RESPECTFULLY SUBMITTED this 2nd day of April, 2007.

A handwritten signature in cursive script, appearing to read "Brent A. De Young", written over a horizontal line.

BRENT A. DE YOUNG, WSBA #27935
ATTORNEY FOR RESPONDENT

U.S. DEPARTMENT OF JUSTICE
IMMIGRATION COURT
1000 SECOND AVENUE, SUITE 2500
SEATTLE, WASHINGTON 98104

FILE: A 90 / 111 / 513RE: Sandoval-Sandoval, ValentinTO: De YoungDATE: 4 / 5 / 07

NOTICE OF HEARING IN REMOVAL PROCEEDINGS

Please take notice that the above-captioned case has been scheduled for a Master Individual hearing before an Immigration Judge on April 16, 2007 at 8:30 A.M./P.M. at:

NORTHWEST DETENTION CENTER
1623 EAST "J" STREET
TACOMA, WA 98421-1615

****IF YOU ARE RELEASED FROM DETENTION YOU WILL RECEIVE A NEW NOTICE FOR HEARING IN THE MAIL. PLEASE APPEAR FOR YOUR HEARING AT THE DATE AND TIME LISTED ON THE NEW NOTICE.**

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice To Appear, in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions:

1. You may be taken into custody by Immigration and Customs Enforcement (ICE) and held for further action.
2. Your hearing may be held in your absence under section 240 (b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Immigration and Customs Enforcement established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT, SEATTLE, WASHINGTON, THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERY TIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN FIVE DAYS OF THE CHANGE OF ADDRESS ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS". CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A List of Free Legal Service Providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) FAX (F)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ ALIEN's ATT/REP ☒ FAX
DATE: 4/5/07 BY: mji
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other
V6

4/13 DHS to file position

RECEIVED

APR 18 2007

NOTICE OF HEARING IN REMOVAL PROCEEDINGS
IMMIGRATION COURT
1000 SECOND AVE., SUITE 2500
SEATTLE, WA 98104

DE YOUNG LAW OFFICE

RE: SANDOVAL-SANDOVAL, VALENTIN
FILE: A90-111-513

DATE: Apr 9, 2007

TO: BRENT A. DE YOUNG ESQ.
ATTORNEY AT LAW
1217 E. WHEELER
MOSES LAKE, WA 98837

Please take notice that the above captioned case has been scheduled for a MASTER hearing before the Immigration Court on Apr 19, 2007 at 1:00 P.M. at:

1623 E. J STREET
TACOMA, WA 98421

You may be represented in these proceedings, at no expense to the Government, by an attorney or other individual who is authorized and qualified to represent persons before an Immigration Court. Your hearing date has not been scheduled earlier than 10 days from the date of service of the Notice to Appear in order to permit you the opportunity to obtain an attorney or representative. If you wish to be represented, your attorney or representative must appear with you at the hearing prepared to proceed. You can request an earlier hearing in writing.

Failure to appear at your hearing except for exceptional circumstances may result in one or more of the following actions: (1) You may be taken into custody by the Department of Homeland Security and held for further action. OR (2) Your hearing may be held in your absence under section 240(b)(5) of the Immigration and Nationality Act. An order of removal will be entered against you if the Department of Homeland Security established by clear, unequivocal and convincing evidence that a) you or your attorney has been provided this notice and b) you are removable.

IF YOUR ADDRESS IS NOT LISTED ON THE NOTICE TO APPEAR, OR IF IT IS NOT CORRECT, WITHIN FIVE DAYS OF THIS NOTICE YOU MUST PROVIDE TO THE IMMIGRATION COURT SEATTLE, WA THE ATTACHED FORM EOIR-33 WITH YOUR ADDRESS AND/OR TELEPHONE NUMBER AT WHICH YOU CAN BE CONTACTED REGARDING THESE PROCEEDINGS. EVERYTIME YOU CHANGE YOUR ADDRESS AND/OR TELEPHONE NUMBER, YOU MUST INFORM THE COURT OF YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER WITHIN 5 DAYS OF THE CHANGE ON THE ATTACHED FORM EOIR-33. ADDITIONAL FORMS EOIR-33 CAN BE OBTAINED FROM THE COURT WHERE YOU ARE SCHEDULED TO APPEAR. IN THE EVENT YOU ARE UNABLE TO OBTAIN A FORM EOIR-33, YOU MAY PROVIDE THE COURT IN WRITING WITH YOUR NEW ADDRESS AND/OR TELEPHONE NUMBER BUT YOU MUST CLEARLY MARK THE ENVELOPE "CHANGE OF ADDRESS." CORRESPONDENCE FROM THE COURT, INCLUDING HEARING NOTICES, WILL BE SENT TO THE MOST RECENT ADDRESS YOU HAVE PROVIDED, AND WILL BE CONSIDERED SUFFICIENT NOTICE TO YOU AND THESE PROCEEDINGS CAN GO FORWARD IN YOUR ABSENCE.

A list of free legal service providers has been given to you. For information regarding the status of your case, call toll free 1-800-898-7180 or 703-305-1662.

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)

TO: ☐ ALIEN ☒ ALIEN c/o Custodial Officer ☒ ALIEN's ATT/REP ☒ DHS

DATE: 4/9/07 BY: COURT STAFF ☒ V3

Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☒ Other

Reset notice

U.S. Department of Justice

Executive Office for Immigration Review

Immigration Court

1000 Second Avenue, Suite 800

Seattle, WA 98104

DATE: 4 / 9 / 06

A#: 90 - 111 - 513

TO: Respondent / Attorney of Record

FROM: Immigration Court

SUBJECT: Change in Date of Immigration Hearing

Due to unforeseen circumstances the date of your hearing before an Immigration Judge has changed. Please disregard any previous hearing notice you may have received and appear at the date and time shown on the enclosed hearing notice. If you have any questions concerning the date and time of your hearing, please contact the Immigration Court at (206) 553-5953.

Enclosure

> Disregard any previous hearing notice and appear at the date and time shown on the attached hearing notice.

P-1001

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SEATTLE, WASHINGTON

File No.: A90111513

In the Matter of)	IN REMOVAL PROCEEDINGS
)	
VALENTIN SANDOVAL)	
)	
)	CERTIFICATE OF SERVICE
)	
Respondent.)	
_____)	

I certify under penalty of perjury under the laws of the State of Washington that on this day I caused a true and correct copy of *Motion to Immediately Release Improperly Detained Individual* to be served on the following in the manner indicated below:

Chief Counsel
Immigration and Customs Enforcement
1000 Second Avenue, Suite 2900
Seattle, WA 98104-1088

() U.S. Mail
() Hand Delivery
(X) FED EX

Signed this 2nd day of April, 2007.

By:  in Moses Lake, Washington.

U.S. DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
1000 SECOND AVE., SUITE 2500
SEATTLE, WA 98104

RECEIVED

APR 25 2007

DE YOUNG LAW OFFICE

In the Matter of:
SANDCVAL-SANDOVAL, VALENTIN

Case No: A90-111-513

RESPONDENT

IN REMOVAL PROCEEDINGS


ORDER OF THE IMMIGRATION JUDGE

After considering the facts and circumstances of this case and as there is no opposition from the parties, it is HEREBY ORDERED that these proceedings be terminated without prejudice.


NTA dated: Jan 25, 2007.

Reason for Termination:

CASE ON DIRECT APPEAL


KENNETH JOSEPHSON
Immigration Judge
Date: Apr 19, 2007

Appeal ~~Waived~~/Reserved by A/I:
Appeal Due Date: _

CERTIFICATE OF SERVICE
THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P)
TO: ☐ ALIEN ☐ ALIEN c/o Custodial Officer ☒ ALIEN's ATT/REP ☒ DHS
DATE: 4/19/07 BY: COURT STAFF 
Attachments: ☐ EOIR-33 ☐ EOIR-28 ☐ Legal Services List ☐ Other

Form EOIR 35 - 6T (Termination)

RECEIVED

APR 17 2007

DE YOUNG LAW OFFICE

DOROTHY STEFAN
Chief Counsel
EDWARD L. DUNLAY
Deputy Chief Counsel
THOMAS P. MOLLOY
Assistant Chief Counsel
1000 Second Avenue, Suite 2900
Seattle, Washington 98104
(206) 553- 2366
Attorneys for the Department
Of Homeland Security

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
IMMIGRATION COURT
SEATTLE, WASHINGTON

April 10, 2007

File No. A90 111 513

Detained

In the Matter of:

SANDOVAL-Sandoval, Valentin

Respondent.

In Removal Proceedings

before Immigration Judge

**DHS RESPONSE TO RESPONDENT'S
MOTION FOR IMMEDIATE RELEASE**

The United States Department of Homeland Security (DHS), Immigration and Customs Enforcement respectfully opposes Respondent's Motion for Immediate Release, received by this office on April 5, 2007. The Immigration Court must conduct an evidentiary hearing: "The Immigration Judge shall conduct proceedings for deciding the inadmissibility or deportability of an alien." INA § 240(a)(1). "At the conclusion of the proceeding the immigration judge shall decide whether an alien is removable from the United States. The determination of the immigration judge shall be based only on the evidence produced at the hearing." INA, § 240(c)(1)(A).

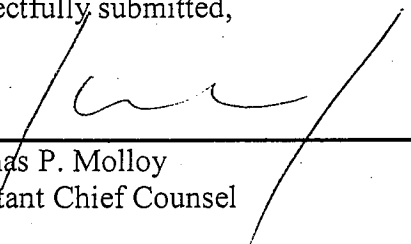
The DHS will stand on its earlier submission of the conviction documents and its arguments of record regard to the Respondent's pleas of guilty to the crime of rape.

In the state of Washington, "A voluntary guilty plea acts as a waiver of the right to appeal." *State v. Smith*, 953 P.2d 810, 811 (Wash. 1998). See *Morales-Alvarado v. INS*, 655 F.2d 172, 175 (9th Cir. 1981) and *Matter of Polanco*, 20 I&N Dec. 894, 896 (BIA 1994).

Further, the DHS notes that counsel for Respondent has mis-characterized the current status of the current proceedings as terminated. To date, proceedings have not been terminated. The case was administratively closed and has now been recalendared.

Counsel has further averred that the Immigration and Customs Enforcement (ICE) has distaste for basic criminal processes. That invective, even if offered in the spirit of zealous advocacy, is wholly without merit.

Respectfully submitted,



Thomas P. Molloy
Assistant Chief Counsel

CERTIFICATE OF SERVICE

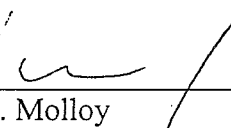
Case Control Name: SANDOVAL-Sandoval, Valentin

File No.: A90 111 513

I hereby certify and declare under penalty of perjury that, on April 10, 2007, I caused to be served the attached documents:

☒ by placing a true copy thereof in a sealed envelope, with postage thereon to be fully prepaid by normal government process and causing the same to be mailed by first class mail to the person at the address set forth below:

Brent A. DeYoung, Esq.
1233 Wheeler Rd.
Moses Lake, WA 98837



Thomas P. Molloy
Assistant Chief Counsel
U.S. Department of Homeland Security
Immigration and Customs Enforcement
1000 Second Avenue, Suite 2900
Seattle, Washington 98104

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	
v.)	CERTIFICATE OF
)	SERVICE
VALENTIN SANDOVAL,)	
)	
Appellant.)	
_____)	

I certify that on this 4th day of October, 2007, I caused a true and correct copy of Appellant's Reply Brief to be served on the following in the manner indicated below:

Carolyn Fair
Grant County Deputy Prosecutor
P.O. Box 37
Ephrata, WA 98823
Attorney for Plaintiff

(X)	U.S. Mail
()	Hand Delivery
()	_____

Valentin Sandoval
P.O. Box 4749
Wenatchee, WA 98807
Appellant

(X)	U.S. Mail
()	Hand Delivery
()	_____

By: 